

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01778-BNB

CHRIS TILLOTSON,

Applicant,

v.

OFFICER T.J. McCOY, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER OF DISMISSAL

Applicant, Chris Tillotson, is confined in the Colorado Mental Health Institute at Pueblo, Colorado. Mr. Tillotson has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 3). Mr. Tillotson also has paid the \$5.00 filing fee for a habeas corpus action. Therefore, the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 3) will be denied as moot.

The Court must construe the application liberally because Mr. Tillotson is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, the Court will dismiss the action without prejudice.

Mr. Tillotson is challenging the validity of his custody pursuant to an order of the

Arapahoe County District Court in case number 07CR2358 finding him not guilty by reason of insanity. He asserts two related claims for relief contending that he was subjected to excessive force by a police officer and that he is imprisoned wrongfully because he is not guilty of second degree assault on the officer. As relief he asks that the charges be dropped or reduced.

Mr. Tillotson previously filed a habeas corpus action in which he also challenges the validity of his custody pursuant to an order of the Arapahoe County District Court in case number 07CR2358 finding him not guilty by reason of insanity. See *Tillotson v. May*, No. 14-cv-00751-BNB (D. Colo. filed Mar. 13, 2014). Mr. Tillotson's claims in this action are the same claims he asserts in 14-cv-00751-BNB and he seeks the same relief in both actions. Case number 14-cv-00751-BNB remains pending.

Mr. Tillotson may not challenge his custody in two separate habeas corpus actions at the same time. Therefore, the instant action will be dismissed without prejudice to consideration of Mr. Tillotson's claims in 14-cv-00751-BNB.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Applicant files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the habeas corpus application (ECF No. 1) is denied and the action is dismissed without prejudice. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing of the denial of a constitutional right. It is FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 3) is denied as moot.

DATED at Denver, Colorado, this 1st day of July, 2014.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court